

2011

LRB-1187



Making of "/>

Jan. 9th-15th,
2011

Grant, Peter

From: Hanle, Bob - DOA [bob.hanle@wisconsin.gov]

Sent: Tuesday, January 11, 2011 11:50 AM

To: Grant, Peter

Subject: RE: UW-Madison

Good questions. Here are my somewhat random thoughts:

Re WHA, it is part of UW-Extension and authority status would only apply to UW-Madison

Re the connection to other state universities, could not that be handled through an MOU-type agreement, or some language requiring the UW Madison Authority (UWMA for short) to cooperate with the Board of Regents (which will continue to govern the other campuses, including Extension and the Colleges) as the interests of education may require? Before merger in 1973, UW Madison was organizationally separate from the other state universities, albeit a state agency.

Re the University Fund and the Agricultural College Fund, the amounts that get distributed are small (about \$10,000-\$15,000 per year for each), so I do not think it would be much of an issue for Madison.

Re the duplicating Board of Regents responsibilities, wouldn't the language only need to spell out the restrictions on the Board's powers/duties, providing the Board with complete autonomy except where restricted by statute. For example, if language does not address employee compensation, the UWMA Board would be free to determine compensation as it sees fit, right?

Regarding logos and the big question (Is it constitutional?), my random thoughts are currently drawing a blank.

Bob Hanle, Team Leader
State Budget Office
101 E. Wilson St. -- 10th Floor
P.O. Box 7864
Madison, WI 53707-7864
(608) 266-1037

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]

Sent: Tuesday, January 11, 2011 9:55 AM

To: Hanle, Bob - DOA

Cc: Kunkel, Mark - LEGIS

Subject: UW-Madison

Hi Bob,

I don't know whether this question has been asked and answered already, but do you think that making the UW-Madison an authority would violate Art. 10, sec. 6 of the Wis. Constitution? Here's what that section says (the italics are mine):

Provision shall be made by law for the establishment of a state university at or near the seat of state government, and for connecting with the same, from time to time, such colleges in different parts of the state as the interests of education may require. The proceeds of all lands that have been or may hereafter be granted by the United States to the state for the support of a university shall be and remain a perpetual fund to be called "the university fund," the interest of which shall be appropriated to the support of the state university, and no sectarian instruction shall be allowed in such university.

Is a university that is an authority still a "state university"? Our drafting manual says "A state authority is a body corporate, created by the legislature, that is not 'the state.'" In fact, typically that is the reason authorities are created: they can perform functions that the state cannot. Note that in *Takle v. University of Wisconsin Hospital and Clinics Authority*, 402 F. 3d 768 (7th Cir. 2005), the court determined that

1/11/2011

UWHCA is a private entity, not an arm of the state, and therefore did not enjoy sovereign immunity from a federal employment discrimination lawsuit. (By the way, this opinion does a good job of discussing the question of what is the state, and is well-written besides. I'll send you a copy.)

Even if a UW authority is a "state university" within the meaning of Art. 10, sec. 6, would it still be connected "to such colleges in different parts of the state" as the constitution seems to require? In fact, doesn't the act of making it an authority *disconnect* it from the other colleges in the system?

I don't know much about the university fund, but if an authority is created, it may not be able to receive interest from the fund.

A couple of other questions occurred to me last night while I was trying to get to sleep. Doesn't the board of regents operate WHA and WHA-TV? That would be difficult to change, as I'm sure the board is the FCC licensee. Also, what about licensing of the UW logo, etc.? Could the new authority use anything that incorporates the UW name or logo (e.g., the "motion W") without the consent of the board of regents? Finally, we are wondering how much of the board of regents duties in ch. 36 will need to be duplicated in ch. 37 for the authority's governing board?

Talk to you soon.

Peter

Rec'd from
Bob Hauke
1/11/11

Below we have addressed your specific questions about how we define flexibility and what would be required for UW-Madison to operate under a structure modeled after a public authority. Section One outlines assumptions about the kinds of things we will need to protect in order to operate effectively under that model. Section Two responds more directly to your questions about specific forms of flexibility. It also reiterates some of the benefits associated with that flexibility and addresses your questions about what would be required in the way of tuition increases to offset different budget-cutting scenarios.

Section One: Assumptions

1. Governing Body

UW-Madison would have its own institutional governing body which would be representative of UW-Madison's constituencies and would oversee its specific and unique needs as a world-class educational and research institution. Members, as a group, would have expertise in the various dimensions of our mission which encompass undergraduate, professional and graduate education, basic and applied research, discovery, Intellectual property transfer, support of existing industries (agriculture, manufacturing, etc.), new business start-ups, and public service of many other kinds. They would also contribute to our development activities, recognizing UW-Madison's increasing dependence on private funding.

- **Members.** Would be appointed by both the governor and UW-Madison. The majority of members would be representative of UW-Madison constituencies.

- Duties. Similar to the duties conveyed under Chapter 36 to the UW System Board of Regents, UW-Madison's governing body would have all the powers necessary or convenient to carry out the purposes of UW-Madison. Current powers by the Board of Regents that would be adopted by UW-Madison include, but are not limited to:

- Authority to enact policies and promulgate rules to govern UW-Madison
- Authority to allocate funds and adopt a budget for UW-Madison
- Authority to promulgate rules under ch. 227
- Police authority
- Condemnation authority
- Authority to set and manage tuition

- Benefits. UW-Madison's governing body would have expertise in all areas of our mission, be representative of UW-Madison's constituencies, have in-depth understanding of the specific needs and opportunities for major research universities and have the ability and willingness to invest in UW-Madison and contribute to development activities.

2. Funding

UW-Madison would maintain the existing level of GPR appropriations (minus the adjustments to the GPR base in 2011-2013 biennium) in the form of a block grant, which would increase at a rate of 2% percent per year in future biennia. The block grant would be used to cover all current GPR-related costs with the exception of debt service and extraordinary increases in fringe benefits and/or utilities. The state would continue to pay debt service on existing and new general fund supported bonds.

avoid a 10% tuition increase each year?

3. Sovereign Immunity

Continued sovereign immunity protection is vital to avoid significantly greater liability exposure for UW-Madison.

4. Self-Funded Liability Program

Along with sovereign immunity, participation in the state's self-funded liability program, including continued coverage under the statutory liability caps, is important for UW-Madison's insurance costs to remain predictable and at current levels. Liability caps discourage frivolous lawsuits, which in turn keeps related costs to UW-Madison and the State low. Alternately, UW-Madison would require sufficient state support to purchase a comparable level of liability insurance in the private market.

5. Property Insurance

UW-Madison would obtain property insurance coverage outside of the state's self-funded program by joining a consortium of other peer institutions of higher education to purchase a private policy. This would allow us to obtain insurance coverage to meet the unique needs of higher education institutions.

6. Employment

→ UW-Madison would be the legal employer of all university employees and would have the right to continue as a participating employer in all current benefit programs.

7. Safety

UW-Madison would maintain the current independent operations of its safety programs.

8. Litigation Representation

→ UW-Madison would continue to be represented in its day-to-day operations by its internal legal staff as a cost-savings measure. Additionally, UW-Madison would continue to be represented by attorneys from the Wisconsin Department of Justice (DOJ) for litigation and advice in specialized areas such as bankruptcy.

9. Shared Governance

Had to preserve - make a major point of preserving this
In keeping with the relevant terms of Chapter 36, UW-Madison would keep its shared governance structure for faculty, academic staff, and students.

10. Contracts

Where permitted by the contract language, all contracts entered into on behalf of UW-Madison would be assigned by the Board of Regents to the new governing body.

11. Exemption from Property and Sales Tax

Continued exemption from property taxes and sales taxes on purchases would be necessary in order to avoid a significant increase in UW-Madison's costs of doing business. UW-Madison would expect to continue making payments for municipal services as under current law.

12. Exemption from Other City/County Municipal Ordinances

State law exempts certain state entities from municipal ordinances and regulations other than zoning ordinances. Inclusion of UW-Madison in this exemption would be important to preserve UW-Madison's rule-making authority.

13. Land/Personal Property/Trust Funds

All land, personal property, and trust fund assets now held by the UW System Board of Regents for the benefit or use by UW-Madison would be transferred to the new governing body.

14. Open Meetings/Public Records

While the Open Meetings and Public Records Laws would continue to apply, targeted exemptions for proprietary research records and intellectual property would enhance the UW-Madison's ability to attract industrial sponsorship of cutting edge research.

Section Two: Flexibilities

1. Human Resources

UW-Madison would be the legal employer of all UW-Madison employees. The governing body would create its own independent human resources system and structure, separate and distinct from the current state system. The governing body would have complete authority to:

- Recruit, assess, hire, appoint and promote employees;
- Establish, maintain and modify a job classification and titling system;
- Set and adjust compensation, based on market, performance and other relevant factors;
- Administer UW-Madison automated payroll and human resources systems (agreements with UW System may be required); and
- Create systems to effectively address employee performance and disciplinary issues

→ UW-Madison would have the right to continue to participate in all benefits programs administered by the Department of Employee Trust Funds, including retirement, health insurance and other insurances. As applicable, UW-Madison would be the sole collective bargaining agent during negotiations with recognized labor organizations. Other state and federal employment laws would continue to apply.

Per your request, we have identified the following academic staff titles that are recruited through a national market: Professor (CHS/non-tenure track), Clinical Professor, Faculty Associate, some Lecturers, Instrumentation Innovator, Researcher, Scientist, University Legal Counsel, Research Animal Veterinarian, and Instrumentation Technologist. In addition, UW-Madison recruits senior-level appointees at the national level. These include positions such as chancellor, vice chancellor, dean and director.

Benefits:

The human resources flexibilities granted to UW-Madison through these structural changes would lead to greater administrative efficiencies and they would allow UW-Madison to better compete at the national and International levels for faculty and key staff.

2. Procurement

Additional Procurement Flexibilities:

- Exempt UW-Madison from Chapter 16 procurement restrictions and grant UW-Madison authority to promulgate parallel purchasing rules and standards for its own procurement that are generally consistent with Chapter 16, but with a more streamlined process and accommodation for unique UW-Madison purchasing requirements
- Alternative is directly to delegate purchasing authority to UW-Madison within Chapter 16 structure and revise Chapter 16 to grant UW-Madison increased flexibilities such as:

- Reduces workload of DOA and UW System

3. Building and Construction

UW-Madison building projects would be addressed as follows:

Capital Projects:

- Gift, PR and/or SEG fee funded projects:
 - UW-Madison to design, bid, and construct projects; UW-Madison retains 4 percent fee
- State-funded projects:
 - Continue to require State enumeration for funding approval but design, bid and construction by UW-Madison; UW-Madison retains 4 percent fee

All Agency Maintenance/Remodeling Projects:

- Delegate all non-State funded projects (gift and PR/SEG) to UW-Madison
- Establish a biennial state maintenance allocation to UW-Madison (currently allocated to UW System), then delegate individual project priority, design, and construction to UW-Madison
- Provide annual report to state on project spending and results

Classroom Renovation Projects:

- Establish biennial allocation to UW-Madison rather than UW System, then delegate project selection, design, and construction
- Provide annual report to state on project spending and results

Energy Conservation Projects:

- Establish biennial allocation to UW-Madison with project selection, design, and construction delegated to UW-Madison using state guidelines for payback energy savings
- Provide annual report to state on project spending and results

Leasing and Real Estate Acquisition

- Delegate gift/PR/SEG leasing and acquisition to UW-Madison
- Continue to require DOA approvals for state-funded leasing

Heating Plant, Utility Maintenance and Replacement Projects

- Continue to include UW-Madison heating plants with all other State utility assets funded jointly by UW-Madison and State sources
- If state is considering outsourcing, UW-Madison would prefer to own and operate its own heating plants

Benefits:

- Accelerate project completion
- Improve project quality by increasing project accountability and supervision
- Reduce costs by removing redundant project management approval process
- Move project management closer to project users/funders
- Maintain transparent/competitive selection and bidding process

*Who does DOA
need to talk to @
workshop to see
if review process
is needed?*

- o increase UW-Madison's statutory thresholds for competitive bid and bid waivers to at least \$500,000. Examples of equipment routinely purchased via the waiver process include an electron microscope and a confocal digital microscope
- o Eliminate requirement to conduct formal cost-benefit analysis before purchasing services from external sources
- o Waive UW-Madison's requirement to participate in statewide mandatory contracts under agreed-upon conditions
- o Delegate authority to UW-Madison to use cooperative contracting with other higher education institutions and higher education consortiums, such as the Committee on Institutional Cooperation Purchasing Consortium, without further approvals from DOA for each such use
- o Delegate authority to UW-Madison to submit sole source requests which statutorily require the Governor's approval directly to the Governor's Office for approval without DOA prior review and approval
- Grant UW-Madison authority to directly contract for banking and financial services to create cost savings and efficiencies in payment for goods and services

E.S. - need 3 year savings

Benefits:

- Generate cost savings to UW-Madison by obtaining better pricing for goods and services through more effective procurement processes
 - o Examples:
 - Current requirements to utilize state-wide contracts prevent the UW-Madison from fully utilizing cooperative purchasing arrangements with higher education consortia. CIC Institutions have reported savings of over \$19 million by using higher education consortia contracts, and even with a very limited ability to participate, UW-Madison estimates \$500,000 in savings through implementation of a lab supply contract alone
 - Peer universities with these flexibilities have achieved or predicted significant cost savings (Iowa - saved \$34 million in FY 09; UC-Berkeley - estimated savings \$24-40 million; Minnesota - goal of \$25 million annual savings after 3-year implementation)
- Help other state agencies with cost savings by extending favorable pricing to goods and services procured by other state agencies
- UW-Madison's processes will allow for 100 percent audit of invoice pricing for goods ordered through its system, including detail line item data about what is being purchased which will provide us with better strategies about where effort should be spent towards reducing costs. If other state agencies used the system, even more data would be available
- Drives down pricing by allowing a more focused effort by UW-Madison to standardize products procured
- Significantly streamlines the handling of requests associated with approval processes
- Allows for contract administration by the largest state user, having the most supply chain influence
- Shifts Infrastructure cost burden to UW-Madison rather than require a duplicative and expensive development effort by DOA

- Reduce workload at DOA and UW System; creates 50-100 private sector jobs through contracting
- Maintain current UW-Madison staffing level while creating 50-100 private sector jobs through service contracting for architects, engineers, contractors, inspectors and accountants
- Save five percent to twenty percent per project based upon estimates provided by private contractors

4. Tuition

The governing body would have delegated authority to set UW-Madison's tuition and to manage enrollment of undergraduate, graduate and professional students. While full authority would rest with the governing body, the goal would be to keep tuition increases under double digits.

2011-13 Biennium

In response to your questions and in accordance with the Governor's instructions, we have considered how we would accommodate a \$50 million base reduction with a 75 percent tuition offset. Our analysis indicates that a tuition offset of this magnitude would require a 26 percent increase in undergraduate tuition over the course of the biennium. This projection takes into account the completion of the Board of Regent-approved Madison initiative for Undergraduates (MIU) phase-in, as well as, the tuition share of "cost to continue". We believe a tuition increase of this amount is unacceptable.

Alternatively, we would like to propose the following outline of how we could accommodate a \$50 million base reduction through a combination of efficiency savings, tuition growth and private fundraising. Specifically, we would increase undergraduate tuition by an average of 10 percent per year over the biennium. This average 10 percent increase includes 3.5 percent to help offset the budget reduction, 3.5 percent to continue to phase in the MIU, and 3 percent to cover the tuition portion of cost to continue. The MIU will be fully implemented at the end of the biennium. The portion of the increase aimed at offsetting the budget reduction would generate \$17.5 million of base funding. In addition, we would aim to generate \$25 million in savings through budget reductions, increased flexibilities and efficiency measures. Finally, private fundraising would generate an additional \$7.5 million per year.

Kunkel, Mark

From: Grant, Peter
Sent: Tuesday, January 11, 2011 1:13 PM
To: Kunkel, Mark
Subject: FW: UW-Madison
Attachments: UW Authority overview 1-4-11.doc

From: Hanle, Bob - DOA [mailto:bob.hanle@wisconsin.gov]
Sent: Tuesday, January 11, 2011 1:08 PM
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Cc: Boggs, Breann C - DOA
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I've also attached a one-pager we put together last week, outlining ideas and issues related to creating a UWMA. It's very broad, so I'm not sure how much help it will be.

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Sent: Tuesday, January 11, 2011 11:50 AM
To: Grant, Peter

2/11/2011

Subject: RE: UW-Madison

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Re the connection to other state universities, could not that be handled through an MOU-type agreement, or some language requiring the UW Madison Authority (UWMA for short) to cooperate with the Board of Regents (which will continue to govern the other campuses, including Extension and the Colleges) as the interests of education may require? Before merger in 1973, UW Madison was organizationally separate from the other state universities, albeit a state agency.

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Talk to you soon.

Peter

Creating a UW-Madison Authority (UWMA)

Beginning July 1, 2011, implement an independent authority for UW Madison. The authority would have the following features:

- A governing board, which could include the State Superintendent of Public Instruction, and ____ members appointed for ____-year terms by the Governor. Governor's appointees could include a student, a representative of the other UW campuses, a representative of WTCS, representatives of UW Madison faculty and staff, and public members
- Complete authority to create and abolish positions, set compensation levels and construct and remodel buildings if funded entirely from gifts and grants

The Authority would be subject to the following restrictions:

- Procurement:
 - Maintain current law with respect to procurement, but provide UW Madison with a designated seat on the DOA Procurement Council
 - Require DOA and UWMA to work together to improve and streamline the procurement process
- Tuition
 - Cap tuition increases for UWMA at an amount that keeps UWMA tuition at or below the estimated median for the Big 10
 - Authorize UWMA to request under s. 13.10 for larger tuition increases
- Construction
 - Require UWMA to report to DOA quarterly on the status of any construction or remodeling projects that are gift or grant-funded.
 - Before initiating a gift or grant-funded capital project, require UWMA to report to DOA on how it will fund the project's ongoing operating costs.
- Compensation
 - Require UWMA to remain part of WRS and the state health insurance system
 - Require UWMA to report annually to DOA on the amount of across-the-board increases provided to faculty, supervisory staff, other academic staff and other staff.

Issues that may need resolution/further analysis (an incomplete list):

- Transfer of building ownership to UWMA
- Impact of UWMA on existing debt; future general obligation bonding
- Amount of GPR funding to allocate to UWMA
- Future of shared space (e.g., System Administration, Extension)
- Expectations regarding UWMA's transfer policy (credits and students)
- Existing statutory requirements for UW-Madison (e.g., appoint a distinguished chair of military history, operate an Area Health Education Center, maintain a herbarium, operate a Center for Urban Land Economics Research, etc.)

Kunkel, Mark

From: Grant, Peter
Sent: Tuesday, January 11, 2011 4:35 PM
To: Kunkel, Mark
Subject: RE: UW-Madison
Good point

From: Kunkel, Mark
Sent: Tuesday, January 11, 2011 4:34 PM
To: Grant, Peter
Subject: RE: UW-Madison

I agree that UMMA is an inst. of higher educ., but I'm wondering if current law imposes duties/restrictions on an instit. of higher educ. that the requester would rather not apply to the UWMA.

From: Grant, Peter
Sent: Tuesday, January 11, 2011 4:31 PM
To: Kunkel, Mark
Subject: RE: UW-Madison

Are you thinking that "institution of higher education" may not include UWMA (or whatever it's called) in places that it should be (and is now, as UW-M)) included? I think UWMA will still be considered an institution of higher education, so unless I'm missing something, I think we're OK.

But what about places where it says "any institution within the Univ. of Wis System"? Those places should include UWMA but won't unless it's explicitly included.

From: Kunkel, Mark
Sent: Tuesday, January 11, 2011 4:21 PM
To: Grant, Peter
Subject: RE: UW-Madison

It just occurred to me that we might also have to check statutory references to the term "institution of higher education" to see if any changes should be made. You agree, or is that overkill? Can you think of other terms to check?

From: Grant, Peter
Sent: Tuesday, January 11, 2011 2:11 PM
To: Kunkel, Mark
Subject: FW: UW-Madison

fyi

From: Hanle, Bob - DOA [mailto:bob.hanle@wisconsin.gov]
Sent: Tuesday, January 11, 2011 2:08 PM
To: Grant, Peter
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Wiser minds than mine informed me that the definition of state agency under s. 7.33 only applies to service as an election official and not as a general definition of state agencies. I overextended.

2/11/2011

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Sent: Tuesday, January 11, 2011 9:55 AM

To: Hanle, Bob - DOA

Cc: Kunkel, Mark - LEGIS

Subject: UW-Madison

Hi Bob,

I don't know whether this question has been asked and answered already, but do you think that making the UW-Madison an authority would violate Art. 10, sec. 6 of the Wis. Constitution? Here's what that section says (the italics are mine):

Provision shall be made by law for the establishment of a state university at or near the seat of state government, and for connecting with the same, from time to time, such colleges in different parts of the state as the interests of education may require. The proceeds of all lands that have been or may hereafter be granted by the United States to the state for the support of a university shall be and remain a perpetual fund to be called "the university fund," the interest of which shall be appropriated to the support of the state university, and no sectarian instruction shall be allowed in such university.

Is a university that is an authority still a "state university"? Our drafting manual says "A state authority is a body corporate, created by the legislature, that is not 'the state.'" In fact, typically that is the reason authorities are created: they can perform functions that the state cannot. Note that in *Takle v. University of Wisconsin Hospital and Clinics Authority*, 402 F. 3d 768 (7th Cir. 2005), the court determined that UWHCA is a private entity, not an arm of the state, and therefore did not enjoy sovereign immunity from a federal employment discrimination lawsuit. (By the way, this opinion does a good job of discussing the question of what is the state, and is well-written besides. I'll send you a copy.)

Even if a UW authority is a "state university" within the meaning of Art. 10, sec. 6, would it still be connected "to such colleges in different parts of the state" as the constitution seems to require? In fact, doesn't the act of making it an authority disconnect it from the other colleges in the system?

I don't know much about the university fund, but if an authority is created, it may not be able to receive interest from the fund.

A couple of other questions occurred to me last night while I was trying to get to sleep. Doesn't the board of regents operate WHA and WHA-TV? That would be difficult to change, as I'm sure the board is the FCC licensee.

2/11/2011

Also, what about licensing of the UW logo, etc.? Could the new authority use anything that incorporates the UW name or logo (e.g., the "motion W") without the consent of the board of regents? Finally, we are wondering how much of the board of regents duties in ch. 36 will need to be duplicated in ch. 37 for the authority's governing board?

Talk to you soon.

Peter

Kunkel, Mark

From: Champagne, Rick
Sent: Wednesday, January 12, 2011 3:52 PM
To: Kunkel, Mark
Subject: FW: Ch. 230

The amendment makes it clear that the authroty employees are not in the state civil service system.

From: Hanaman, Cathlene
Sent: Wednesday, January 12, 2011 3:47 PM
To: Champagne, Rick
Subject: FW: Ch. 230

Rick-- You're far more qualified to answer this question than I.

From: Kunkel, Mark
Sent: Wednesday, January 12, 2011 3:00 PM
To: Hanaman, Cathlene
Subject: Ch. 230

If I amend the definition of "agency" in s. 230.03 (3) to not include my new authority (the University of Wisconsin-Madison Authority), so that the new authority is excluded like other authorities under current law, what does that do? I need a sentence for a 4 star note that describes the exclusion from the definition. Can you help?